

Federa Housing Finance Board

Memorandum

August 1, 1991

TO: J. Stephen Britt
Executive Director

FROM: Beth L. Climo
General Counsel

SUBJECT: Retroactivity of 10-Year Moratorium on Re-entry Into
the FHLBank System

Dana Yealy, General Counsel of the Federal Home Loan Bank of Pittsburgh ("FHLBank-Pittsburgh"), has asked us to address the issue of whether the 10-year moratorium on re-entry into the Federal Home Loan Bank System applies retroactively.

ISSUE:

Whether the 10-year moratorium on re-entry into the FHLBank System applies retroactively to an institution that withdrew from membership in the FHLBank System before the Federal Home Loan Bank Act ("Bank Act") was amended to change the 5-year moratorium to a 10-year moratorium.

CONCLUSION:

The 10-year moratorium does not apply retroactively.

DISCUSSION:

The FHLBank-Pittsburgh received a membership application from a state-chartered state-insured savings and loan that withdrew from membership in the FHLBank-Pittsburgh in 1983. At that time, subsection 6(m) of the Bank Act prohibited a member from reapplying for membership for a period of five years from the date of withdrawal.

Subsequently, sections 706 and 715 of the Financial Institutions, Reform, Recovery and Enforcement Act of 1989 ("FIRREA") redesignated subsection 6(m) to subsection 6(h) and amended it by extending the moratorium from five years to ten years. Pub. L. No. 101-73, 103 Stat. 183 (August 9, 1989). Subsection 6(h) of the Bank Act, as amended, provides that "an institution which withdraws from membership may acquire membership in any [FHLBank] only after the expiration of a period of 10 years thereafter...." 12 U.S.C.A. § 1426(h) (West Supp. 1990). The issue is whether the increase in the moratorium from five to ten years should apply retroactively to institutions that withdrew from membership in the FHLBank System prior to FIRREA.

As a general rule, statutes are applied prospectively and will not be construed as retroactive unless the language employed in the act clearly, by express language or necessary implication, indicates that the legislature intended retroactive application. See Sutherland, Statutes and Statutory Construction, § 41.04 (4th ed. 1984); See also Bowen v. Georgetown University Hospital,

U.S. ___, 102 L. Ed. 2d 493, 109 S.Ct. 468 (1988). Subsection 6(h) does not expressly state or imply that it should be applied retroactively and, therefore, under the rules of statutory construction the moratorium should be applied prospectively only.

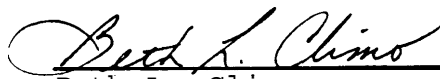
Furthermore, the legislative history of FIRREA supports the conclusion that Congress did not intend the extension of the moratorium to apply retroactively. The Conference Report to FIRREA specifically states:

This section amends current section 6(m) of the Federal Home Loan Bank Act (12 U.S.C. 1426(m)) by increasing from 5 years to 10 years the period during which an institution that withdraws from membership in a Bank would be prohibited from rejoining that Bank.... Institutions that withdrew from Federal Home Loan Bank membership prior to the date of enactment may rejoin after 5 years from the date of their withdrawal. Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess. 428 (1989).

Thus, the Conference Report expressly states that Congress intended the extension of the moratorium to 10 years to apply only prospectively.

CONCLUSION:

The 10-year moratorium in subsection 6(h) does not apply retroactively. Since FHLBank-Pittsburgh's membership applicant withdrew from membership in 1983 -- based on the old five-year moratorium -- it is not prohibited from rejoining the FHLBank System.



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